

REMARKS

A check for the fee for a five-month extension of time and excess claim fees accompanies this paper. Any fees that may be due in connection with the filing of this paper or with this application may be charged to Deposit Account No. 06-1050. If a Petition for Extension of time is needed, this paper is to be considered such Petition.

Claims 33-79 are pending in the application. Claims 1-12, 14, 15, 20-30 and 32 are cancelled herein without prejudice or disclaimer. Claims 13, 16-19 and 31, which are directed to non-elected subject matter, are withdrawn and thus cancelled herein without prejudice or disclaimer. Applicant expressly reserves the right to file continuation or divisional applications to the cancelled or withdrawn subject matter.

New claims 33-79 are added herein and are fully supported by the application and claims as originally filed. New claims 33-39 find basis, for example, in original claims 11, 21, 23, 25 and 32 and paragraphs 9 and 23. New claims 40 and 41 find basis, for example, in paragraphs 23 (lines 16-17), 63 and 47 (lines 3-6). Basis for new claims 42-56 can be found, for example, in paragraphs 27, 38, 45 and 53 and original claim 14. New claims 57-79 find basis in paragraphs 9, 23 and 29, and the original claims. Thus, no new matter is added.

Original claims 1-30 are directed to compositions for diagnosis/visualization or treatment of wounded or inflamed tissue, whereas claims 31 and 32 are directed to methods involving monitoring of a subject into whom such a composition has been introduced. In the Office Action, claims 3-30 are separately grouped, *i.e.*, groups I-III, on the basis of whether the composition comprises a bacterial cell, mammalian cell or virus, respectively. It is further stated in the Office Action that method claim 32 will be rejoined with any properly elected invention, and that the restriction requirement separating claims of groups I-III will be withdrawn upon allowance of claims 1 and 2, which are said to link inventions of groups I-III.

In response, Applicant elects group I along with linking claims 1-2 and rejoined claim 32. Applicant additionally amends the elected claims herein through cancellation of the elected claims and addition of claims 33-79 which, like original claim 32, are directed to methods involving a subject to whom a composition such as that in original claims 1-30 has been administered. Specifically, new claims 33-79 are directed to methods for detecting the presence or absence of a wound, wounded tissue, disease, condition, inflammation site or inflamed tissue

involving monitoring a subject to whom a detectable microorganism or cell has been administered for detection of the microorganism or cell.

The subject matter of the new claims is consistent with the election of group I (with rejoined claim 32 and linking claims 1 and 2). In particular, each of the new claims, beginning with independent claims 33-35, is directed to a method (as in original claim 32 for rejoinder) in which a subject has been or is administered a composition which comprises a detectable microorganism or cell (as in original linking claim 1). Dependent claims 36-38 specify that the microorganism is a **bacterium** in accordance with group I of the Restriction Requirement. Furthermore, the new dependent claims incorporate much of the subject matter of the original dependent claims, such as in original claims 3-8 (compare to new claims 71-79), 9-11 (compare to new claims 57-68), 14 and 15 (compare to new claims 51-56), 21, 22, 25 and 26 (compare to new claim 35) and 23-24 (compare to new claim 39). The remaining new claims further particularly point out the elected subject matter. Accordingly, the claims as amended herein are consistent with the election of group I (with rejoined claim 32 and linking claims 1 and 2) as set forth in the Office Action.

The Office Action further requires Applicant to choose among species as outlined in items (i)-(vii) on page 5 of the Office Action. Applicant chooses species in which the protein capable of inducing a detectable signal is a luciferase or the signal is detectable by magnetic resonance imaging (MRI), the bacterium is *Vibrio cholerae*, and the disease is coronary artery disease.

In connection with the requirement to choose species, the Office Action directs Applicant to "make a single choice for each of (i)-(vii), *whether or not such election falls within the elected invention.*" Accordingly, although the species set forth in (iv), (v) and (vii) are not recited in the pending claims due to election of group I, Applicant chooses species in which the stem cell is autologous, the enzyme causes digestion of debris and the vector is a BAC.

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ELECTION

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Entry of this amendment and examination of the application on the merits are respectfully requested.

Respectfully submitted,



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